

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW HAMPSHIRE

Joseph S. Eisenberg

v.

Civil No. 05-cv-171-JD

British Airways Plc

**O R D E R**

Proceeding *pro se*, plaintiff Joseph S. Eisenberg brings this action pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C.A. § 1001, et seq. (1999 & Supp. 2005), seeking recovery for the alleged denial of pension benefits. The complaint is before me for preliminary review to determine whether this court's subject matter jurisdiction has been invoked. See United State District Court for the District of New Hampshire Local Rule ("LR") 4.3(d)(1)(A).

Although Eisenberg has not alleged whether he has exhausted his administrative remedies before coming to this court, see McMahon v. Digital Equipment Corp., 162 F.3d 28, 39-40 (1st Cir. 1998), he has alleged the essential elements of an ERISA claim to state a claim arising under federal law for purposes of invoking this court's federal question subject matter jurisdiction. See

28 U.S.C. § 1331 (providing for federal question jurisdiction).

Accordingly, I order the Clerk's office to issue the necessary summons against the defendant to enable this action to proceed. See LR 4.3(d)(1)(A).<sup>1</sup> Plaintiff shall complete service within 120 days following issuance of the summons as provided by Fed. R. Civ. P. 4(c). Service shall include the summons, a copy of the complaint (document no. 1) and this order.

Defendant shall answer or otherwise plead within twenty days from the date of service as provided by Fed. R. Civ. P.

12(a)(1)(A).

Plaintiff is referred to Fed. R. Civ. P. 5, which requires that every pleading after the complaint and every written motion, notice, and similar paper be served on all parties, which service

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<sup>1</sup>My review of the file indicates plaintiff neglected to provide the court with a summons for the defendant in this action. Plaintiff shall prepare a summons form for the defendant and return it to the Clerk's office within thirty (30) days of the date of this order. Failure to do so will result in a recommendation of dismissal of this action. Upon receipt of the prepared summons form, the Clerk's office shall issue the summons and return it to the plaintiff.

shall be made by mailing it to the parties' attorney(s).

**SO ORDERED.**

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James R. Muirhead  
United States Magistrate Judge

Date: July 11, 2005

cc: Joseph S. Eisenberg, *pro se*